

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
EUREKA DIVISION

CLYDE F. WAGNER,  
Plaintiffs,

v.

WAL-MART STORES, INC.,  
Defendants.

Case No. [13-cv-03475-NJV](#)

**ORDER TO SHOW CAUSE WHY  
ACTION SHOULD NOT BE DISMISSED**

On October 16, 2013, this court granted defendant's motion to dismiss the complaint. Doc. No. 23 at 6 ("[T]he court finds that Wagner did not timely file his complaint, and did not satisfy his burden of establishing that he is entitled to equitable tolling. Accordingly, the court will grant Wal-Mart's motion to dismiss"). The court gave plaintiff leave to file an amended complaint to set "forth in detail his good faith and reasonable conduct such that the court may evaluate whether equitable tolling is warranted here." Id. The court ordered plaintiff to file his amended complaint within twenty days of its order, or November 5, 2013. As of the date of this order, plaintiff has not filed an amended complaint.

In addition, the ADR department noted on the docket that plaintiff's counsel has failed to appear at two ADR telephone conferences scheduled for October 17, 2013, and November 12, 2013.

1 Based on plaintiff's failure to amend the complaint and his failure to participate in the  
2 court-ordered ADR process, this court orders plaintiff to show cause why his case should not be  
3 dismissed under Fed. R. Civ. P. 41(b). Plaintiff must file a responsive pleading or declaration  
4 within two weeks of this order, showing cause why this action should not be dismissed with  
5 prejudice.

6 If Plaintiff fails to file a responsive pleading or declaration, the court will dismiss the  
7 action, with prejudice.

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9 **IT IS SO ORDERED.**

10 Dated: November 21, 2013

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14 MANDOR J. VADAS  
15 United States Magistrate Judge  
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